

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WARREN E. BELL, JR.,

Petitioner,

v.

JASON BENNETT, Superintendent,  
Stafford Creek Corrections Center,

Respondent.

CASE NO. 2:24-cv-01204-JNW

ORDER OVERRULING OBJECTIONS,  
AND ADOPTING REPORT AND  
RECOMMENDATION

The Court considers the Report and Recommendation (“R&R”) of United Magistrate Judge Brian A. Tsuchida, Dkt. No. 4, and Petitioner Warren Bell’s objections to the R&R, Dkt. No. 5. The R&R recommends denying Bell’s application to proceed in forma pauperis (“IFP”) because Bell has sufficient funds to pay the \$5.00 filing fee for his federal habeas petition. Bell has submitted nine, timely objections to the R&R. For the reasons below, the Court OVERRULES Bell’s objections, Dkt. No. 5, and ADOPTS the R&R, Dkt. No. 4.

**1. RULINGS ON BELL’S OBJECTIONS**

Federal Rule of Civil Procedure 72 allows a party to file written objections to an R&R within fourteen days. Fed. R. Civ. P. 72(b)(2). The objections must be

1 “specific” and relate “to the [R&R’s] proposed findings and recommendations.” *Id.*  
2 “The district judge must determine de novo any part of the magistrate judge’s  
3 disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).

4 **Objection Nos. 1–2: Overruled.**

5 Bell vaguely objects to the “entire” R&R. Dkt. No. 5 at 1. He also maintains  
6 that the R&R “failed to apply 28 U.S.C. § 1915.” Dkt. No. 5 at 1. Given the Court’s  
7 duty to construe pro se pleadings liberally, *see Erickson v. Pardus*, 551 U.S. 89, 94  
8 (2007), the Court construes these objections, together, as a challenge to Judge  
9 Tsuchida’s IFP determination and reviews Judge Tsuchida’s IFP determination de  
10 novo. *See* Fed. R. Civ. P. 72(b)(3).

11 After considering Bell’s IFP application, the remainder of the record, and the  
12 law, the Court finds that Bell can pay the \$5.00 filing fee for his federal habeas  
13 petition. *See* Dkt. No. 1-9 (prisoner trust account showing \$150.00 as “Average  
14 Monthly Receipts”). Thus, under Section 1915, Bell must pay the filing fee. 28  
15 U.S.C. § 1915(b)(1), (4).

16 **Objection Nos. 3–9: Overruled.**

17 On review of Objection Nos. 3–9, the Court concludes that they cannot be  
18 construed as “proper objections” to the R&R, Dkt. No. 4. The objections are as  
19 follows:

- 20 • The R&R “failed to address Petitioner’s Request for Certification in  
21 the 28 U.S.C. § 2241.” Dkt. No. 5 at 1.
- 22 • The R&R “failed to address Petitioner’s Affidavit in Support of 28  
23 U.S.C. § 2241.” *Id.*

- 1 • The R&R “failed to take Judicial Notice pursuant to mandatory  
2 provision of section (b) nor was Petitioner allowed to be heard  
3 pursuant to section (e). *Id.* at 2 (citing “ER 201”).
- 4 • The R&R “failed to order the respondent to produce a certified copy  
5 of the Arrest Warrant, which is necessary for claimed adjudication.”  
6 *Id.* (citing *Brady v. Maryland*, 373 U.S. 83 (1963)).
- 7 • The R&R “failed to consider whether or an evidentiary hearing  
8 would benefit a merits resolution, or Petitioner’s right to contest  
9 factual disputes and expand the record. *Id.* (citing *Townsend v. Sain*,  
10 372 U.S. 293 (1963) and *Cullen v. Pinholster*, 563 U.S. 170, 181–82  
11 (2011)).
- 12 • The R&R “asserts a [p]rocedural [d]efense without any party  
13 asserting the defense.” *Id.* (citing *Trest v. Cain*, 522 US. 87, 88 (1977)  
14 and *O’Neal v. McAninch*, 513 U.S. 432, 437–444 (1995) (Cook quotes  
15 the phrase, “defendant bears the risk of equipoise”)).
- 16 • The R&R “recharacterizes the Petitioner from a 28 U.S.C. § 2241 to  
17 a 28 U.S.C. § 2254.” *Id.*

18 These objections appear to be form objections that Bell intends to file in the  
19 event that Judge Tsuchida recommends dismissal of Bell’s habeas petition down the  
20 road. As Bell’s arguments do not address the substance of the R&R whatsoever, the  
21 Court does not consider them to be proper objections to the R&R—much less  
22 “specific” objections to “proposed findings and recommendations.” Fed. R. Civ. P.  
23 72(b), (3). In any event, the Court has already reviewed the R&R on Bell’s IFP  
application de novo and agrees with its conclusion. Neither the law nor the  
information presented in Objection Nos. 3–9 requires the Court to find otherwise.

## 2. ORDER

Having reviewed, de novo, the Report and Recommendation of the assigned  
United States Magistrate Judge, the objections, and the record, the Court ORDERS:

- The Court ADOPTS the Report and Recommendation, Dkt. No. 4, and DENIES Petitioner's application to proceed in forma pauperis.
- Petitioner's deadline to pay the filing fee is September 27, 2024. If the filing fee is not paid, the Court will consider this case dismissed without prejudice and direct the Clerk of the Court to close it.
- The Clerk of the Court is DIRECTED to provide a copy of this Order to Petitioner.

Dated this 13th day of September, 2024.



Jamal N. Whitehead  
United States District Judge